IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 113 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

THE STATE OF GUJARAT

Versus

BHUPENDRA ATMARAM THAKKAR

Appearance:

Shri K.P.Rawal, Additional Public Prosecutor, for the Appellant - State.

Shri J.V.Bhairavia, Advocate, for the Respondent - Accused.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 10/12/96

ORAL JUDGEMENT

The order of sentence of fine of Rs.1000/- in default simple imprisonment for 30 days after convicting

the respondent - accused on his plea of guilt for the offence punishable under Section 92 read with Section 21 (1) (iv) (b) of the Factories At, 1948 (the Act for brief) has aggrieved the State and it has therefore moved this court for enhancement of the sentence under Section 377 of the Code of Criminal Procedure, 1973 (the Code for brief).

2. The facts giving rise to this appeal move in a narrow compass. The respondent - accused was the occupier of one factory in the name and style of Bhupendra & Brothers Machinery Pvt. Ltd. situated at Swaminarayan Godown, Outside Dariapur Darwaja at Ahmedabad. One workman, named, Rajeshbhai Rawal, met with an accident on 20th July 1990. Thereupon, the Factory Inspector visited the factory of the respondent accused on 16th November 1990. On inquiry he found that the motor of the machine which was of 5 horse power was not properly secured as required under Section 21 (1) (iv) (b) of the Act. He therefore filed his complaint in the Court of the Metropolitan Magistrate (Court No.4) at Ahmedabad charging the respondent - accused with the offence punishable under Section 92 read with Section 21 (1) (iv) (b) of the Act. It came to be registered as Criminal Case No.3765 of 1990. The plea of the respondent - accused was recorded on 25th November 1993. He pleaded guilty to the offence with which he was charged. Thereupon, he was convicted of the offence punishable under Section 92 of the Act and sentenced to fine of Rs.1000/- in default simple imprisonment for 30 days. The State Government as the prosecution agency found the sentence imposed on the respondent - accused to be unduly lenient and it has therefore invoked the appellate jurisdiction of this court under Section 377 of the Code for enhancement of the sentence.

3. It cannot be gainsaid that not to follow safety measures as provided in the Act would expose workmen in the factory to hazardous working conditions. A serious view has therefore to be taken for any contravention of safety measures constituting the offence punishable under Section 92 of the Act. I am supported in my view by the ruling of this court in the case of STATE OF GUJARAT v. ISHWARBHAI HARKHABHAI PATEL reported in 1994 (1) Gujarat Current Decisions at page 267. I need not burden this judgment by reproducing the pertinent observations made therein regarding calling for a stern and strict view of the matter in the case of breach of safety measures provided under the Act.

4. Sitting as a single Judge, I am bound by the

aforesaid ruling of this court. Even otherwise, I am in respectful agreement therewith. A similar view is taken by this court in its three unreported rulings in Criminal Appeal No.456 of 1993 decided on 7th October 1996, Criminal Appeal No.1386 of 1993 decided on 9th October 1996 and Criminal Appeal No.40 of 1994 decided on 23rd October 1996. In each of these cases, the trial court had convicted the accused of the offence punishable under Section 92 of the Act on the ground of contravention of safety measures provided in the Act and the Rules framed thereunder and in the matter of sentence undue leniency was shown to the accused. In each case the fine was substantially raised and in one case (Criminal Appeal No.1386 of 1993 decided on 9th October 1996) substantive sentence of rigorous imprisonment for six months was also imposed for the offence punishable under Section 92 of the Act for contravention of safety measures provided in the Act. There is no reason why a similar strict view should not be taken in this case.

5. Learned Advocate Shri Bhairavia for the respondent - accused has submitted that it was the case of a plea bargain. There is no material on record to show or to suggest that it was the case of a plea bargain. The respondent - accused not only accepted the plea of guilt when his plea was recorded, but he filed a pursis confessing his guilt and another pursis on 25th November 1993 further confessing his guilt and inter alia stating therein that every machine in the factory has been properly secured by that time. He prayed for mercy on the ground that his factory was on a small scale and his economic conditions were delicate and the accident caused to the workman was a mishap and he was paid compensation in the sum of Rs.3000/- by the E.S.I. Corporation. It was further stated in the pursis that the company gave to the injured workman Rs.3000/- towards treatment and help. It thus becomes clear that it was his voluntary confession of guilt when his plea was recorded. If there was a plea bargain, he would not have confessed his guilt in such fashion on as many as three occasions. In that view of the matter, it is difficult for me to accept the submission urged before me by learned Advocate Shri Bhairavia for the respondent accused that the confession of the guilt by the respondent - accused at the time of recording his plea was a plea bargain. It may be mentioned that the respondent - accused has not filed any affidavit in this court in that regard.

6. In fact, the pursis filed by him on 25th November 1993 was a clear indication of the fact that, on the date

of the accident, the machine in respect of which the accident was caused to the workman in question was not properly secured. This becomes clear from his statement in the pursis that, by the time the pursis was filed, every machinery in the factory was properly secured. That by itself would go to show and to suggest that the machine in question at the relevant time was not properly secured. In that view of the matter, I think the respondent - accused had no alternative but to plead guilty to the charge levelled against him in the complaint.

7. Learned Advocate Shri Bhairavia for the respondent accused has submitted that the workman got injured because he did not follow instructions to observe safety measures as the machine was required to be put into motion as it was not properly working at the relevant time. I think this submission cannot be accepted in absence of any material whatsoever on record in that regard. If the workman himself was responsible for the mishap, that could have been a defence under the law in a compensation case if at all it was available. So far as the criminal charge was concerned, it was clearly mentioned that adequate safety measures as required by Section 21 (1) (iv) (b) of the Act were not taken at the relevant time in respect of the machine in question. That fact was clearly found by the plea of guilt in view of the pursis filed by the respondent accused on 25th November 1993. In that view of the matter, the aforesaid submission urged before me by learned Advocate Shri Bhairavia cannot be accepted.

8. Learned Advocate Shri Bhairavia for the respondent accused has then submitted that the injured workman was given immediate treatment for the injuries suffered by him and he was paid compensation also for treatment and help over and above the compensation awarded by the E.S.I. Corporation. It was nice of the respondent accused to have done so. That would however not absolve him from the penal liability that was incurred by him under Section 92 read with Section 21 (1) (iv) (b) of the Act. There is no provision in Section 92 thereof to the effect that no penal liability would be fastened to the occupier of the factory if compensation and/or help is given to the injured workman. The aforesaid submission urged before me by learned Advocate Shri Bhairavia for the respondent - accused is based on irrelevant considerations and such irrelevant considerations have no place in criminal proceeding for fastening penal liability.

9. It transpires from the complaint that three fingers of the left-hand of the workman in question were crushed in the machine. Such injury can certainly be said to be serious bodily injury in view of the Explanation appended to the Proviso to Section 92 of the Act.

10. Relying on the aforesaid ruling of this court in the case of ISHWARBHAI PATEL (supra), learned Advocate Shri Bhairavia for the respondent - accused has urged that the minimum sentence may be imposed in this case. I think the minimum sentence is prescribed as a guideline for exercise of discretion by the court while awarding sentence. It is not necessary that only the minimum sentence has to be imposed if the guilt is established at trial or if the plea of guilt is made by the accused at any stage of the proceeding. In its unreported ruling in Criminal Case No.456 of 1993 decided on 7th October 1996, in a similar case this court has clearly held:

> "It may be noted that the minimum sentence is a guiding factor for award of sentence. It does not mean that a sentence higher than the minimum prescribed under Section 92 of the Act cannot be awarded if the offence under Section 92 of the Act is proved by evidence or the accused pleads guilty thereto. The seriousness of the offence can never be lost sight of. It is not the case of the respondent - accused before this court that it was a plea bargain. No affidavit in support thereof has been filed by or on his behalf in this case. In that view of the matter, the respondent - accused cannot and need not be permitted to escape serious consequences arising from his breach of safety measures and contravention of the aforesaid statutory provision on his part."

In that case, the fine imposed by the learned trial Magistrate was only Rs.500. In that context, this court has said: "The fine of Rs.500/- only can just be said to be only ridiculous." In view of the aforesaid dictum of law by this court, the fine of Rs.1000/- imposed in this case can be said to be just ridiculous. It cannot be sustained in law.

11. The ruling of this court in the case of STATE OF GUJARAT v. PRAFULCHANDRA SOMCHAND SHAH reported in 1996 (2) 37 (2) Gujarat Law Reporter at page 272 is distinguishable on its own facts. In that case, the learned trial Magistrate had acquitted the respondent

accused of the offence punishable under Section 92 read with Section 21 (1) (iv) (b) of the Act. While upsetting the order of acquittal, this court indicated that, though the offence required deterrent penalty, the accused should not be sent to jail after lapse of nine years and the penalty of fine was thought to be sufficient.

12. The present appeal is not against the order of acquittal. The learned trial Magistrate has convicted the respondent - accused of the offence on his plea of guilt. Even at the cost of repetition, it may be reiterated that it was not the case of a plea bargain. The State Government is aggrieved by the leniency shown in the matter of sentence by the learned trial Magistrate. I have also found that the learned trial Magistrate has dealt with the respondent- accused very leniently and the sentence imposed on the respondent accused by the learned trial Magistrate is just ridiculous. When the workman has suffered crushing of three fingers of his left-hand, it can by no stretch of imagination be said to be a minor or trivial injury. The respondent - accused has to be dealt with sternly and strictly for not providing adequate safety measures in his factory in contravention of Section 21 (1) (iv) (b) of the Act.

13. In absence of any material on record, the submission urged before me by learned Advocate Shri Bhairavia for the respondent - accused that there was no serious bodily injury cannot be accepted. Learned Advocate Shri Bhairavia has prayed for time to bring on record the medical certificate regarding the injury suffered by the workman. It is too late in the day to bring such material on record, more particularly when the guilt was admitted at trial and leniency was not prayed for on the ground that the concerned workman did not suffer any serious bodily injury.

14. In view of my aforesaid discussion, I am of the opinion that the order of sentence of fine of Rs.1000/in default simple imprisonment for 30 days passed by the learned trial Magistrate on 25th November 1993 after convicting the respondent - accused of the offence punishable under Section 92 read with Section 21 (1) (iv) (b) of the Act in Criminal Case No.3765 of 1990 cannot be sustained in law. The respondent - accused deserves to be punished with rigorous imprisonment for six months and fine of Rs.50000/- for the offence in question.

15. In the result, this appeal is accepted. The order of sentence of fine of Rs.1000/- in default simple

imprisonment for 30 days passed by the learned trial Magistrate on 25th November 1993 after convicting the respondent - accused of the offence punishable under Section 92 read with Section 21 (1) (iv) (b) of the Act in Criminal Case NO.3765 of 1990 is modified by sentencing the respondent - accused to rigorous imprisonment for six months and raising the fine to Rs.50000/- (rupees fifty thousand). The fine imposed by the learned trial Magistrate, if paid, may be given set off against the enhanced fine imposed on the respondent accused in this appeal. On payment of the enhanced fine by and/or on behalf of the respondent - accused, an amount of Rs.15000/- (rupees fifteen thousand) is ordered to be paid to the injured workman. An arrest warrant is ordered to be issued for arrest of the respondent accused. The arrest warrant may not be executed for a period of two weeks from today at the oral request of learned Advocate Shri Bhairavia for the respondent - accused. This order of mine shall not be construed as not to surrender to custody if under the Rules governing appeals to the Supreme Court the accused is required to surrender before his appeal can be entertained.

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